

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA, ex rel.)
W. A. DREW EDMONDSON, in his capacity as)
ATTORNEY GENERAL OF THE STATE OF)
OKLAHOMA and OKLAHOMA SECRETARY)
OF THE ENVIRONMENT C. MILES TOLBERT,)
in his capacity as the TRUSTEE FOR NATURAL)
RESOURCES FOR THE STATE OF OKLAHOMA,)

Plaintiff,

VS.

05-CV-0329 GKF-SAJ

TYSON FOODS, INC., TYSON POULTRY, INC.,)
TYSON CHICKEN, INC., COBB-VANTRESS, INC.,)
AVIAGEN, INC., CAL-MAINE FOODS, INC.,)
CAL-MAINE FARMS, INC., CARGILL, INC.,)
CARGILL TURKEY PRODUCTION, LLC,)
GEORGE'S, INC., GEORGE'S FARMS, INC.,)
PETERSON FARMS, INC., SIMMONS FOODS, INC.,)
and WILLOW BROOK FOODS, INC.,)

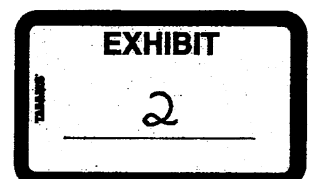
Defendants.

**RESPONSES OF DEFENDANT, PETERSON FARMS, INC.
TO STATE OF OKLAHOMA'S APRIL 20, 2007
SET OF REQUESTS TO ADMIT AND REQUEST FOR PRODUCTION**

Defendant, Peterson Farms, Inc. (“Peterson Farms”), submits the following Responses to State of Oklahoma’s April 20, 2007 Set of Requests to Admit and Request for Production to Peterson Farms, Inc., pursuant to Federal Rules of Civil Procedure 26, 34 and 36.

GENERAL OBJECTIONS:

1. Peterson Farms objects to, and does not agree to subject itself to, the arbitrary and extraordinary "definitions and instructions" described by the Plaintiffs to certain terms as set forth in their April 20, 2007 Set of Requests to Admit and Requests for Production propounded to Peterson Farms. To the extent that such terms appear in the Requests to Admit and Requests



for Production and are in excess of the requirements of the Federal Rules of Civil Procedure, Peterson Farms instead ascribes the ordinary, every day and reasonably, commonly understood meanings which apply to such terms, and also which comply with the Federal Rules of Civil Procedure. Peterson Farms objects to the definitions to the extent they assume facts not in evidence or related to facts or contentions in dispute in the action. Peterson Farms also specifically objects to the following definitions:

- a. The definition of “Poultry Waste” is overly broad, inconsistent with the terminology set forth in the statutes and regulations governing poultry growing operations in the Illinois River Watershed (“IRW”), and includes substances not typically associated with poultry litter.
- b. The definition of “Your poultry growing operations” is argumentative, and by virtue of ignoring the legal and factual distinction between Peterson Farms owned and operated facilities (of which there are none in the IRW), and those operations owned and operated by independent contractors, Plaintiffs seek for Peterson Farms to admit as a predicate to its responses factual and legal issues in dispute in the lawsuit. Given that Peterson Farms does not own, operate or manage any poultry growing operation in the IRW, its proper response to each of Plaintiffs’ requests for admission is an unqualified – denial. However, subject to the foregoing objections, and without waiving same, Peterson Farms will respond to Plaintiffs’ requests assuming that Plaintiffs are seeking Peterson Farms’ knowledge with regard to the independent poultry growing operations in the IRW, which have raised poultry under contract with it.
- c. The definition of “Phosphorus” is overly broad and technically incorrect. Phosphorus is an element, distinct from its many compounds, and Peterson Farms objects

to the characterization or suggestion that the element – Phosphorus - exists or can be found in any byproduct of poultry growing operations. Peterson Farms also refuses to speculate as to which phosphorus compounds the term is intended by Plaintiffs to include.

d. The definition of “Pathogens” is misleading, overly broad, vague and ambiguous. Furthermore, it seeks for Peterson Farms to admit as a predicate to its responses that the purported listed substances are pathogenic, which are factual issues in dispute in the lawsuit. Plaintiffs’ definition seeks to define the term, while at the same time it states that the term is not limited to the specific examples set forth therein. Peterson Farms also objects to the definition as it loosely describes broad categories of substances that are not necessarily harmful or pathogenic.

e. The definition of “Run-off” is misleading, overly broad, vague and ambiguous. Peterson Farms objects to the definition as it includes within its scope both the acts of nature and volitional or negligent acts of persons, which cannot be characterized by a single term. The term is also ambiguous in that it is unclear whether Plaintiffs are suggesting that a “release” involves the substance they define as “poultry waste,” or whether it also includes chemical or other constituents which comprise some fraction of “poultry waste.” Peterson Farms also objects to the definition in that it employs the term “release,” which has a specific statutory and regulatory meaning, and as such, the definition seeks for Peterson Farms, as a predicate to its responses, to admit factual and legal matters, which are in dispute in the lawsuit.

f. The definition of “Waters of the State” is misleading, overly broad, vague and ambiguous. Peterson Farms objects to this definition as it seeks to categorize privately-

owned and localized waters as “waters of the State,” which is unsupported by law.

Peterson Farms also objects to the definition as it seeks for Peterson Farms, as a predicate to its responses, to admit factual and legal matters, which are in dispute in the lawsuit.

g. Peterson Farms has set forth its objections to the aforementioned definitions based upon the fact that said definitions assume facts not in evidence, or presume factual and legal issues in controversy, and responds to the Plaintiffs’ requests without waiver thereof.

2. Each of the following responses are made subject to and without waiving any objections Peterson Farms may have with respect to the subsequent use of these responses or the documents identified pursuant thereto, and Peterson Farms specifically reserves: (a) all questions as to the privilege, relevancy, materiality, and admissibility of said responses or documents; (b) the right to object to the uses of said responses or the documents identified pursuant thereto in any lawsuit or proceeding on any or all of the foregoing grounds or on any other proper ground; (c) the right to object on any and all proper grounds, at any time, to other discovery procedures involving or related to said responses or documents; and (d) the right, at any time, upon proper showing, to revise, correct or clarify any of the following responses.

3. Peterson Farms objects to each and every request to the extent it seeks or calls for information or the identification of documents which are protected from discovery and privileged by reason of: (a) the attorney-client communication privilege; (b) the “work product” doctrine; (c) the “trial preparation” doctrine; (d) the joint defense or “co-party” privilege; or (e) any other applicable discovery rule or privilege. To the extent Peterson Farms withholds or claims any protection from discovery from any document, Peterson Farms will produce logs of such documents as the document production progresses.

4. Peterson Farms objects to each and every request to the extent it seeks information or the identification of documents concerning any claims or occurrences other than the claims and occurrences set forth in Plaintiffs' First Amended Complaint for which Plaintiffs request relief.

5. Peterson Farms objects to each request to the extent it seeks or relates to information or the identification of documents which are available to the public, and thus, equally available to Plaintiffs. Subject to and without waiving the foregoing objection, Peterson Farms will produce any public documents within its possession which are either responsive to Plaintiffs' requests, or are within the scope of production described in the following responses. Additionally, Peterson Farms has identified numerous public documents in its Initial Disclosures, and to the extent they are within Peterson Farms' possession, they either have been or will be produced.

6. Peterson Farms objects to each request to the extent it seeks or relates to information or the identification of documents which are protected as confidential business information, and proprietary and confidential trade secrets.

7. Peterson Farms also incorporates as though fully restated herein all objections and limitations to responses made by every other Defendant to the corresponding requests to admit and request for production.

8. The foregoing objections apply to each and every response herein. By specifically incorporating individual General Objections in any response, Peterson Farms expressly does not waive the application of the remainder of the General Objections to such response.

9. When the following responses state that Peterson Farms will produce certain documents, or that responsive documents will be produced for a certain time period, Peterson Farms is not assuring that in fact such documents for the entire time period have been located or identified for production.

Subject to these objections and subject to any additional objections set forth hereinafter, Peterson Farms responds to Plaintiffs' April 20, 2007 Set of Requests to Admit and Request for Production to Peterson Farms, Inc., as follows:

Requests to Admit

Request to Admit No. 1: Admit that poultry waste from one or more of your poultry growing operations has been spread on land located within the Illinois River Watershed.

Response: Peterson Farms objects to this request as overly broad and burdensome in that it is not limited in scope by a relevant or reasonable time period. Peterson Farms also specifically incorporates its General Objection Nos. 1(a) and (b) based upon Plaintiffs' definitions of "poultry waste" and "your poultry growing operations." Subject to the foregoing objections and its General Objections, Peterson Farms denies that it operates any poultry growing operation within the IRW. With regard to independent poultry growers who raise poultry under contract with Peterson Farms, the request is admitted.

Request to Admit No. 2: Admit that poultry waste from one or more of your poultry growing operations that has been spread on land located within the Illinois River Watershed contains one or more "hazardous substances" within the meaning of CERCLA.

Response: Peterson Farms objects to this request as overly broad and burdensome in that it is not limited in scope by a relevant or reasonable time period. Peterson Farms objects to the form of the request as it is compound. Peterson Farms also objects to the use of the term

“hazardous substance,” as the issue of what is or is not a hazardous substance within the meaning of CERCLA is a factual and legal issue in controversy in the lawsuit. Peterson Farms also specifically incorporates its General Objection Nos. 1(a) and (b) based upon Plaintiffs’ definitions of “poultry waste” and “your poultry growing operations.” Subject to the foregoing objections and its General Objections, Peterson Farms denies that it operates any poultry growing operation within the IRW. With regard to independent poultry growers who raise poultry under contract with Peterson Farms, Peterson Farms has made a reasonable inquiry and the information known or readily obtainable by Peterson Farms is insufficient to enable it to admit or deny the request.

Request to Admit No. 3: Admit that poultry waste from one or more of your poultry growing operations that has been spread on land located within the Illinois River Watershed contains pathogens.

Response: Peterson Farms objects to this request as overly broad and burdensome in that it is not limited in scope by a relevant or reasonable time period. Peterson Farms objects to the form of the request as it is compound. Peterson Farms also specifically incorporates its General Objection Nos. 1(a), (b) and (d) based upon Plaintiffs’ definitions of “poultry waste,” “your poultry growing operations” and “pathogens.” Subject to the foregoing objections and its General Objections, Peterson Farms denies that it operates any poultry growing operation within the IRW. With regard to independent poultry growers who raise poultry under contract with Peterson Farms, Peterson Farms has made a reasonable inquiry and the information known or readily obtainable by Peterson Farms is insufficient to enable it to admit or deny the request.

Request to Admit No. 4: Admit that poultry waste from one or more of your poultry growing operations that has been spread on land located within the Illinois River Watershed contains phosphorus.

Response: Peterson Farms objects to this request as overly broad and burdensome in that it is not limited in scope by a relevant or reasonable time period. Peterson Farms objects to the form of the request as it is compound. Peterson Farms also specifically incorporates its General Objection Nos. 1(a), (b) and (c) based upon Plaintiffs' definitions of "poultry waste," "your poultry growing operations" and "phosphorus." Subject to the foregoing objections and its General Objections, Peterson Farms denies that it operates any poultry growing operation within the IRW. With regard to independent poultry growers who raise poultry under contract with Peterson Farms, Peterson Farms denies the request.

Request to Admit No. 5: Admit that poultry waste from one or more of your poultry growing operations that has been spread on land located within the Illinois River Watershed has run-off from the land upon which it has been applied.

Response: Peterson Farms objects to this request as overly broad and burdensome in that it is not limited in scope by a relevant or reasonable time period. Peterson Farms objects to the form of the request as it is compound. Peterson Farms also specifically incorporates its General Objection Nos. 1(a), (b) and (e) based upon Plaintiffs' definitions of "poultry waste," "your poultry growing operations" and "run-off." Subject to the foregoing objections and its General Objections, Peterson Farms denies that it operates any poultry growing operation within the IRW. With regard to independent poultry growers who raise poultry under contract with Peterson Farms, Peterson Farms denies the request.

Request to Admit No. 6: Admit that poultry waste from one or more of your poultry growing operations that has been spread on land located within the Oklahoma portion of the Illinois River Watershed has run-off from the land upon which it has been applied.

Response: Peterson Farms objects to this request as overly broad and burdensome in that it is not limited in scope by a relevant or reasonable time period. Peterson Farms objects to the form of the request as it is compound. Peterson Farms also specifically incorporates its General Objection Nos. 1(a), (b) and (e) based upon Plaintiffs' definitions of "poultry waste," "your poultry growing operations" and "run-off." Subject to the foregoing objections and its General Objections, Peterson Farms denies that it operates any poultry growing operation within the IRW. With regard to independent poultry growers who raise poultry under contract with Peterson Farms, Peterson Farms denies the request.

Request to Admit No. 7: Admit that one or more "hazardous substances" within the meaning of CERCLA contained in poultry waste from one or more of your poultry growing operations that has been spread on land located within the Illinois River Watershed has run-off from the land upon which it has been applied.

Response: Peterson Farms objects to this request as overly broad and burdensome in that it is not limited in scope by a relevant or reasonable time period. Peterson Farms objects to the form of the request as it is compound. Peterson also objects to the use of the term "hazardous substance," as the issue of what is or is not a hazardous substance within the meaning of CERCLA is a factual and legal issue in controversy in the lawsuit. Peterson Farms also specifically incorporates its General Objection Nos. 1(a), (b) and (e) based upon Plaintiffs' definitions of "poultry waste," "your poultry growing operations" and "run-off." Subject to the foregoing objections and its General Objections, Peterson Farms denies that it operates any

poultry growing operation within the IRW. With regard to independent poultry growers who raise poultry under contract with Peterson Farms, Peterson Farms has made a reasonable inquiry and the information known or readily obtainable by Peterson Farms is insufficient to enable it to admit or deny the request.

Request to Admit No. 8: Admit that pathogens contained in poultry waste from one or more of your poultry growing operations that has been spread on land located within the Illinois River Watershed has run-off from the land upon which it has been applied.

Response: Peterson Farms objects to this request as overly broad and burdensome in that it is not limited in scope by a relevant or reasonable time period. Peterson Farms objects to the form of the request as it is compound. Peterson Farms also specifically incorporates its General Objection Nos. 1(a), (b), (d) and (e) based upon Plaintiffs' definitions of "poultry waste," "your poultry growing operations," "run-off" and "pathogens." Subject to the foregoing objections and its General Objections, Peterson Farms denies that it operates any poultry growing operation within the IRW. With regard to independent poultry growers who raise poultry under contract with Peterson Farms, Peterson Farms has made a reasonable inquiry and the information known or readily obtainable by Peterson Farms is insufficient to enable it to admit or deny the request.

Request to Admit No. 9: Admit that phosphorus contained in poultry waste from one or more of your poultry growing operations that has been spread on land located within the Illinois River Watershed has run-off from the land upon which it has been applied.

Response: Peterson Farms objects to this request as overly broad and burdensome in that it is not limited in scope by a relevant or reasonable time period. Peterson Farms objects to the form of the request as it is compound. Peterson Farms also specifically incorporates its

General Objection Nos. 1(a), (b) and (c) based upon Plaintiffs' definitions of "poultry waste," "your poultry growing operations" and "phosphorus." Subject to the foregoing objections and its General Objections, Peterson Farms denies that it operates any poultry growing operation within the IRW. With regard to independent poultry growers who raise poultry under contract with Peterson Farms, Peterson Farms denies the request.

Request to Admit No. 10: Admit that poultry waste contributes a greater amount of phosphorus to the portion of the Illinois River located in Oklahoma than waste water treatment plants, cattle manure, manure from wildlife, septic systems, commercial fertilizers and stream bank erosion combined.

Response: Peterson Farms objects to this request as overly broad and burdensome in that it is not limited in scope by a relevant or reasonable time period. Peterson Farms objects to the form of the request as it is compound, and it assumes facts not in evidence. Peterson Farms also specifically incorporates its General Objection Nos. 1(a) and (c) based upon Plaintiffs' definitions of "poultry waste" and "phosphorus." Subject to the foregoing objections and its General Objections, Peterson Farms denies the request.

Request to Admit No. 11: Admit that poultry waste contributes a greater amount of pathogens to the portion of the Illinois River located in Oklahoma than waste water treatment plants, cattle manure, manure from wildlife and septic systems combined.

Response: Peterson Farms objects to this request as overly broad and burdensome in that it is not limited in scope by a relevant or reasonable time period. Peterson Farms objects to the form of the request as it is compound, and it assumes facts not in evidence. Peterson Farms also specifically incorporates its General Objection Nos. 1(a) and (d) based upon Plaintiffs' definitions of "poultry waste," and "pathogens." Subject to the foregoing objections and its

General Objections, Peterson Farms has made a reasonable inquiry and the information known or readily obtainable by Peterson Farms is insufficient to enable it to admit or deny the request.

Request to Admit No. 12: Admit that poultry waste contributes a greater amount of phosphorus to Lake Tenkiller than waste water treatment plants, cattle manure, manure from wildlife, septic systems, commercial fertilizers and stream bank erosion combined.

Response: Peterson Farms objects to this request as overly broad and burdensome in that it is not limited in scope by a relevant or reasonable time period. Peterson Farms objects to the form of the request as it is compound, and it assumes facts not in evidence. Peterson Farms also specifically incorporates its General Objection Nos. 1(a) and (c) based upon Plaintiffs' definitions of "poultry waste" and "phosphorus." Subject to the foregoing objections and its General Objections, Peterson Farms denies the request.

Request to Admit No. 13: Admit that one or more of your poultry growing operations located in the Oklahoma portion of the Illinois River Watershed is not in compliance with its animal waste management plan.

Response: Peterson Farms objects to this request as overly broad and burdensome in that it is not limited in scope by a relevant or reasonable time period. Based upon the phrasing of the request, Peterson Farms assumes Plaintiffs are inquiring of the status as of the date of these responses. Peterson Farms also specifically incorporates its General Objection No. 1(b) based upon Plaintiffs' definition of "your poultry growing operations." Subject to the foregoing objections and its General Objections, Peterson Farms denies that it operates any poultry growing operation within the IRW. With regard to independent poultry growers who raise poultry under contract with Peterson Farms, Peterson Farms has made a reasonable inquiry and

the information known or readily obtainable by Peterson Farms is insufficient to enable it to admit or deny the request.

Requests for Production

Request for Production No. 1: For each of the above Requests to Admit that you deny, please produce any and all documents in your possession, custody and control that support your denial (to the extent you have not already produced them to the State in this litigation).

Response: Peterson Farms objects to this request on the same bases as the requests for admission set forth above. Peterson Farms also objects to this request to the extent it requires, or suggests that Peterson Farms carries the burden to prove the absence of facts or evidence to support Plaintiffs' contentions. Peterson further objects to the extent this request includes within its scope documents, which are protected from discovery, and specifically incorporates its General Objection No. 3. Subject to and without waiving the foregoing objections and the General Objections, Peterson Farms states that non-privileged documents responsive to this request, to the extent they are known to Peterson Farms, are within Plaintiffs' possession. Peterson Farms will supplement this response if and when additional documents are identified.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on the 21st day of May, 2007, I electronically transmitted the attached document to the following ECF registrants:

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I also hereby certify that I served the attached documents by United States Postal Service, proper postage paid, on the following who are not registered participants of the ECF System:

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